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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/524,040	03/13/2000	Derek D. Mahoney	2506.1013-001	6480
21005	7590	12/16/2003	EXAMINER	
HAMILTON, BROOK, SMITH & REYNOLDS, P.C. 530 VIRGINIA ROAD P.O. BOX 9133 CONCORD, MA 01742-9133			NGUYEN, TUAN DUC	
		ART UNIT		PAPER NUMBER
		2643		18
DATE MAILED: 12/16/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	09/524,040	MAHONEY ET AL.	
	Examiner	Art Unit	
	Tuan D. Nguyen	2643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE \_\_\_\_ MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 02 October 2003.

2a) This action is **FINAL**.      2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 1-4 and 19-24 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_ is/are allowed.

6) Claim(s) 1-4 and 19-24 is/are rejected.

7) Claim(s) \_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

13) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

a) The translation of the foreign language provisional application has been received.

14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.

4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_.

5) Notice of Informal Patent Application (PTO-152)

6) Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election of claims 1-4 in Group I with traverse in Paper No. 15 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 102***

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

3. Claims 1-4 and 19-24 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. patent number 6,532,295 (Brimhall et al).

Regarding claim 1, Brimhall et al discloses a Complete in the Canal (CIC) hearing aid body (column 4 lines 10-15 and column 5 lines 50-54) adapted to interchangeably fit inside the ear canal of either a right side or left side of an ear of a typical user such that a distal end of the body is disposed proximally adjacent to a tympanic membrane of said user.

Regarding claim 2, Brimhall et al also show the body of claim 1 formed of two half shells joined together with hollow interior for housing hearing aid components (figure 9).

Regarding claim 3, Brimhall et al further discloses a soft tip (200) is secured at the distal end of the body.

Regarding claim 4, Brimhall et al also show the tip includes a sound port (162) for coupling sound from a receiver housed in the body to the membrane of a hearing user.

Regarding claim 19, Brimhall et al discloses a hearing aid body comprising a shell (10) which is shaped to be inserted into and useable inside the ear canal (column 4 lines 10-15 and column 5 lines 50-54) of a right ear or left ear proximal to the tympanic region of a user and which houses the requisite components (column 5 lines 54-59) for a functional hearing aid.

Regarding claim 20, Brimhall et al also shows the shell is formed of two halves which are bonded together (figure 9) and wherein a flexible tip (200) is retained at a distal end of the shell.

Regarding claim 21, Brimhall et al further discloses the components include a permanently wired battery (column 10 lines 16-43) and the housing aid body is adapted to be disposable.

Regarding claim 22, Brimhall et al discloses a hearing aid body formed of a semi-rigid shell (figure 9) enclosing hearing aid components (column 5 lines 50-54) with a flexible tip (200) retained at one end of the shell, the shell having a shape adapted to fit in the ear canal proximal to the tympanic region of either right or left human ear (column 4 lines 10-15).

Regarding claim 23, Brimhall et al also discloses the tip contains a receiver (10) and a sound tube (162) extending between the receiver and a distal end of the tip.

Regarding claim 24, Brimhall et al discloses the shell is formed of two half shells joined together (figure 9) and in which the components include a microphone, and signal processing electronics (column 5 lines 50-54) and a battery permanently wired to the electronics (column 10 lines 16-43).

### ***Conclusion***

4. Applicant's arguments with respect to claims 1-4 and new claims 19-24 have been considered but are moot in view of the new ground(s) of rejection.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tuan D. Nguyen whose telephone number is (703) 305-7168. The examiner can normally be reached on M-F 6:30-3:00. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (703) 305-4708. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9314.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

**Any response to this action should be mailed to:**

Commissioner of patents and trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 872-9306, for formal communications intended for entry and for informal or draft communications, please label "PROPOSED" or "DRAFT".

Hand-delivered responses should be brought to Crystal Park II, 2121 Crystal Drive, Arlington, VA., Sixth Floor (Receptionist).

TDN  
12/9/03



CURTIS MINZ  
SUPERVISORY PATENT EXAMINER  
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